ster *v.* Bosanquet (1912) A. C. 394. This was an appeal from the Supreme Court of Ceylon reversing a judgment of the District Court of Colombo as to the proper construction of a contract which provided that on breach thereof a specified amount should be paid "as liquidated damages, and not as a penalty." The court below had held that the sum specified was, notwithstanding the terms of the contract, as a penalty. The contract in question was made on the dissolution of partnership between the plaintiff and defendant which contained a provision that the defendant would not for ten years sell the whole or any part of the crops of certain estates without first offering to the plaintiff the option of buying the same, and if the defendant should commit a breach of the contract he should pay to the plaintiff £500 as liquidated damages and not as a penalty. The defendant committed a breach of the contract. The Judicial Committee of the Privy Council (Lords Macnaghten, Shaw, Mersey, and Robson), following Clydebank Engineering Co. *v.* Castaneda (1905), A. C. 6, hold that in such cases it is impossible to lay down any abstract rule, but that the facts and circumstances of each case have to be considered, and the court has to consider whether or not the amount fixed as damages is extravagant, exorbitant or unconscionable at the time when the stipulation is made, that is to say, in regard to any possible amount of damages which may be conceived to have been within the contemplation of the parties when they made the contract. In the present case their Lordships thought that at the time the contract was made it was impossible to foresee the extent of the injury which the plaintiff might sustain by the defendant's breach of the contract, and that the damages, though very substantial, might be difficult of proof; and that the amount fixed in the present case, having regard to the circumstances, could not be reasonably regarded as extravagant, or unreasonable; they, therefore, held that the amount named was recoverable as liquidated damages. —Canada Law Journal.

**Note.**—This is precisely the rule laid down in Stony Creek Lumber Co. *v.* Fields, 102 Va. 1, 45 S. E. 797. See Crawford *v.* Heatwole, 15 V. L. R. 787 and extensive note.

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**Interest on Legacies.**—The House of Lords have affirmed the judgment of the Court of Appeal in In re Walford, Kenyon *v.* Walford (81 L. J., Ch. 128), where the question was as to the date from which the interest of a demonstrative legacy begins to run. The mere fact that a demonstrative legacy is to be paid out of a reversionary fund affords no exception to the usual rule that, where no time is fixed for payment, the legacy carries interest from the date twelve months after the death of the testator. In this case the testator bequeathed to his sister "the sum of £10,000 as her sole and absolute property, to be paid out of the estate and effects inherited by me from my

mother, in terms of her last will;" he then disposed of the residue of the said estate and effects. The testator's death occurred in 1903. The estate and effects out of which the legacy was payable were subject to a life interest of the testator's father, who died in 1910. Mr. Justice Joyce had held that the legacy carried interest at 4 per cent. per annum only from 1910, and applied the authority of Earle *v.* Billingham (27 L. J., Ch. 545). The Court of Appeal, however, reversed the Court below and held, distinguishing the special circumstances of Earle *v.* Billingham, that the true rule applicable here was that laid down by Lord Cairns, in In re Lord's Estate; Lord *v.* Lord (36 L. J., Ch. 533), that "a legacy payable at a future day carries interest only from the time fixed for its payment; on the other hand, where no time for payment is fixed, the legacy is payable at, and therefore bears interest from, the end of a year after the testator's death, even though it be expressly made payable out of a particular fund, which is not got in until after a longer interval." This judgment the House of Lords have affirmed, and held that, as no direction could be found here that the legacy was not to be paid until the fund fell in, the right to payment arose and interest ran from twelve months after the death of the testator.—London Law Journal.

**Note.**—In Virginia we have the general rule that a legacy is payable one year after appointment of executor, and bears interest from that time unless a different time is fixed by the will when interest is to begin. Moorman *v.* Crockett, 90 Va. 185, 17 S. E. 875. Independently of the statute (Code, § 2706), the common-law rule would apply, as in the principal case, and interest would begin after a year from the testator's death. Shobe *v.* Carr, 3 Munf. 10. As to whether the rule should be applied to a demonstrative legacy, when the fund out of which the legacy is payable is not realized until after the year, we have no Virginia decision, but a West Virginia case, Bradford *v.* McConihay, 15 W. Va. 732, is in point. There it is held that a legacy to be paid out of a fund arising from the sale of real estate, which is not sold until after the year, bears interest from a year after death of the testator.

And in Koon's appeal, 5 Cent. Rep. 259, 133 Pa. 621, it was held that the fact that a residuary estate out of which a legacy could be paid was in part composed of a trust fund, which did not fall into the residuary estate until twenty-six years after the death of the testator, does not prevent the above rule from taking effect. In this case it is said that the general rule will not yield to the impossibility of getting in the estate so as to pay the legacy within the year allowed for that purpose.

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**Banker's Custom.**—To make a custom good in the Courts it must be reasonable, certain and compulsory, and consistent with the gen-